**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.**

Crl. Misc. No. 57436-M of 2006

DATE OF DECISION : 31.01.2007

Bhupinder Singh

**....** PETITIONER

Versus

State of Punjab and another

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. Veneet Sharma, Advocate,
for the petitioner.

Mr. N.S. Gill, AAG, Punjab.

Mr. Sumeet Mahajan, Advocate,
for respondent No.2.

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Petitioner Bhupinder Singh, who is one of the accused in a complaint case filed by respondent No.2 Lachhman Singh, has filed this petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as `the Code') for setting aside the order dated 31.8.2006, passed by Special Judge, Amritsar, whereby witness of the petitioner i.e. DW.2 Surat Singh (an official of the Punjab and Sind Bank) has been directed to produce the record of the account of the petitioner regarding money transaction in favour of co-accused Balbir Singh.

**2.** The brief facts, which are relevant for the decision of this petition, are that respondent No.2 filed a complaint against four persons, including the petitioner, under Sections 3 and 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as `the Act') with the allegation that in the year 1958, the complainant purchased a plot in Amritsar, in the name of his father. Subsequently, co-accused of the petitioner, namely Balbir Singh and

Mohinder Singh forged a power of attorney with respect to the said plot/house and then they dispossessed the complainant from the front portion of the said house. It is also alleged that all the accused had openly addressed the complainant by his caste, which is an offence under the Act. In the said complaint, all the accused were summoned. During the trial, the complainant moved an application under Section 311 of the Code to the effect that besides the witnesses already examined by him, he wants to examine other witnesses, including Clerk of Punjab and Sind Bank in order to prove that money was withdrawn from the bank account of the petitioner and the same was given to his co-accused as a financial help to them, which in itself is an offence under Section 8 of the Act. The said application, filed by the complainant, was dismissed by the trial court vide its order dated 28.3.2003, while observing as under :-

> "7. The complainant has sought additional evidence to produce the above said witnesses on the ground that accused have been provided financial assistance for abatement of the offence. The first stage for the complainant to raise this plea was when the complaint was lodged. There is no such allegation in the complaint. Even in the present application, it is not mentioned that which of the accused received financial assistance from whom. Complaint in the present case was lodged as back as in the year 1996. After lapse of about 6 years, the present application has been filed. Even in the application no such details have been given regarding financial assistance to the accused or to whom.
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> 8. No doubt the court has ample power to allow additional evidence u/s 311 Cr.P.C. but the same can be used only to advance the cause of justice but complainant can not be allowed to travel beyond his original complaint. Authorities Rajendra Prasad, Nirmal and Darbara Singh case supras are distinguishable as in those cases, Hon'ble Judges held that the

> evidence sought to be produced is maternal for the just decision of the case. Complainant could not make out a case falling within the ambit of four corner of Section 311 Cr.P.C."

Against the aforesaid order, respondent No.2-complainant filed Crl. Misc. No. 31751-M of 2003 in this court, which was dismissed as withdrawn on 1.9.2005 with liberty to the complainant to avail any other remedy. Then, after conclusion of evidence of the complainant, defence evidence of the accused was recorded. The petitioner summoned Surat Singh as DW.2 with the account opening form in order to prove address of the petitioner and to prove that he was residing in the house in question since the year 1993. On 31.8.2006, DW.2 Surat Singh appeared in the court and placed on record certified copy of the account opening form as Ex.DA. An opportunity was given to the complainant to cross-examine this witness. After cross-examining this witness on the material aspect with regard to the address of the petitioner, the State counsel put him a question to the effect as to whether on 10.12.1994, an amount of Rs. 50,000/- was transferred from the account of the petitioner through cheque to the account of accused Balbir Singh. This question was put in order to prove that during the pendency of the case, financial assistance was given by the petitioner to the other accused. The petitioner objected to this question on the ground that already an application filed by the complainant under Section 311 of the Code for bringing the very same evidence on record was dismissed by the trial court and the revision filed against the same was also withdrawn. Therefore, the prosecution could not be permitted to ask such question in order to prove the said fact. The objection of the petitioner was deferred to be decided at the time of final arguments. However, the witness was directed to bring the record from the bank to answer the said question. Hence, this petition has been filed.

**3.** I have heard counsel for the parties.

**4.** In my opinion, in the facts and circumstances of the case, the trial court was not justified in issuing direction to DW.2 to bring the record

pertaining to the transfer of the alleged amount from the account of the petitioner to the account of accused Balbir Singh. This witness was produced in defence by the accused with a limited purpose i.e. to prove his address and to prove that the petitioner was residing in the house in question since the year 1993 and in the examination-in-chief, the witness has only stated that he has brought certified copy of the account opening form in the name of Bhupinder Singh petitioner, copy of which has been placed on record as Ex.DA. In cross-examination, Public Prosecutor asked question with regard to the account opening form, but subsequently he asked the question regarding transfer of Rs. 50,000/- from the account of the petitioner through cheque to the account of accused Balbir Singh. The asking of this question was objected by counsel for the petitioner on the ground that on earlier occasion, application of the complainant for producing such evidence by way of additional evidence was dismissed. In my opinion, once the application for additional evidence to prove this fact was dismissed by the trial court, the same evidence cannot be permitted to be brought on record by putting this question to the witness, who was examined by the accused only to prove his address by bringing on record the account opening form. In my opinion, the prosecution cannot establish its case by cross-examining a defence witness on a particular point, particularly when on that point, application of the prosecution for leading additional evidence has already been dismissed.

**5.** Counsel for the complainant, during the course of arguments, emphasised that the wide power has been given to the court to permit the additional evidence to a party. He submitted that the complainant was wrongly not allowed by the trial court to summon the officer of the bank to prove the transfer of some amount from the account of the petitioner to the account of his co-accused, but now when the said witness is present in the court, the complainant/prosecution should be permitted to ask the question to the witness pertaining to the said transaction.

**6.** I do not find any force in the aforesaid contention. The complainant/prosecution can cross-examine the defence witness only on relevant point. Section 139 of the Indian Evidence Act provides that a person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness. Since in the instant case, DW.2 Surat Singh was called in defence to prove the account opening form in order to prove his address and in order to show that he was residing there, therefore, he can be cross-examined only to that extent. He cannot be cross-examined on the point of transfer of some amount from the account of the petitioner to the account of the other co-accused, particularly when the application for additional evidence filed by the complainant to examine the said witness in order to prove the same fact was dismissed.

**7.** In view of the above, this petition is allowed and the impugned order dated 31.8.2006, passed by Special Judge, Amritsar, directing DW.2 Surat Singh to produce the record with regard to the account of the petitioner regarding money transaction in favour of co-accused Balbir Singh is set aside.

**January 31, 2007** **( SATISH KUMAR MITTAL )**
ndj **JUDGE**